

(1) *Methods of service.* Documents may be served in person, by U.S. Postal Service, by third-party commercial carrier, by facsimile transmission, or by electronic transmission (email). For documents filed pursuant to §§ 2700.9(a), 2700.24, 2700.45, 2700.70(f), 2700.75(f), and subpart F (applications for temporary relief), the method of service used must be no less expeditious than that used for filing, except that if service by electronic transmission (email) is impossible, the filing party must serve in person, by third party commercial carrier, or facsimile transmission, resulting in same-day delivery.

(2) *Effective date of service.* When service is by U.S. Postal service, service is effective upon mailing. When service is in person, by third-party commercial carrier, by facsimile transmission, or by electronic transmission (email), service is effective upon successful receipt by the party intended to be served.

(d) *Proof of service.* All pleadings and other filed documents shall be accompanied by a certification setting forth the date, method of service, and all contact information used.

[78 FR 77357, Dec. 23, 2013]

§ 2700.8 Computation of time.

Unless otherwise provided for in the Act, these rules, or by order, the due date for a pleading or other deadline for party or Commission action (hereinafter “due date”) is determined sequentially as follows:

(a) Except to the extent otherwise provided herein (see, e.g., §§ 2700.24 and 2700.45), when the period of time prescribed for action is less than 11 days, Saturdays, Sundays, and federal holidays shall be excluded in determining the due date.

(b) When a party serves a pleading by a method of delivery resulting in other than same-day service, the due date for party action in response is extended 5 additional calendar days beyond the date otherwise prescribed, after consideration of paragraph (a) of this section where applicable.

(c) The day from which the designated period begins to run shall not be included in determining the due date. The last day of the prescribed period for action, after consideration of

paragraphs (a) and (b) of this section where applicable, shall be included and be the due date, unless it is a Saturday, Sunday, federal holiday, or other day on which the Commission’s offices are not open or the Commission is open but unable to accept filings, in which event the due date shall be the next day which is not one of the aforementioned days.

(d) The time of filing with the Commission shall be determined using Washington, DC, local time. For filing by electronic means and by facsimile transmission, the due date ends at midnight Washington, DC, local time. For filing by other means, the due date ends at 5:00 p.m. Washington, DC, local time.

Example 1: A motion is filed with the Commission on Monday, July 1, 2013. Under § 2700.10(d), other parties in the proceeding have 8 days in which to respond to the motion. Because the response period is less than 11 days, intervening weekends and holidays, such as Thursday, July 4, 2013, are excluded in determining the due date. A response is thus due by Friday, July 12, 2013. In addition, those parties not served with the motion on the day it was filed have 5 additional calendar days in which to respond, or until Wednesday, July 17, 2013.

Example 2: A Commission Judge issues his final decision in a case on Friday, July 5, 2013. Under § 2700.70(a), parties have until August 4, 2013, to file with the Commission a petition for discretionary review of the Judge’s decision. Even though the decision was mailed, 5 additional calendar days are not added, because paragraph (b) of this section only applies to actions in response to parties’ pleadings. However, because August 4, 2013, is a Sunday, the actual due date for the petition is Monday, August 5, 2013.

Example 3: Pursuant to § 2700.24(a), the Secretary of Labor files a referral of a citation arising out of a dispute over the content of an operator’s emergency response plan. Certain subsequent deadlines in such cases are specifically established by reference to calendar days, and thus paragraph (a) of this section would not necessarily apply in determining due dates. For instance, if the referral was filed on

Thursday, July 11, 2013, the short and plain statement the operator must file in response within 5 calendar days would be due Tuesday, July 16, 2013, because the intervening weekend days would not be excluded in determining the due date. If the fifth calendar day were to fall on a weekend, holiday, or other day on which the Commission is not open however, the terms of paragraph (c) would apply and the due date would be the next day the Commission is open.

[78 FR 77358, Dec. 23, 2013]

§ 2700.9 Extensions of time.

(a) The time for filing or serving any document may be extended for good cause shown. Filing of a motion requesting an extension of time is effective upon receipt. A motion requesting an extension of time shall be received no later than 3 days prior to the expiration of the time allowed for the filing or serving of the document, and shall comply with § 2700.10. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by electronic transmission (email) is impossible, the filing party must serve in person, by third party commercial carrier, or by facsimile transmission, resulting in same-day delivery.

(b) In exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired.

(c) This rule does not apply to petitions for discretionary review filed pursuant to section 113(d)(2)(A)(i) of the Act, 30 U.S.C. 823(d)(2)(A)(i), and § 2700.70(a).

[64 FR 48713, Sept. 8, 1999, as amended at 71 FR 44207, Aug. 4, 2006; 78 FR 77358, Dec. 23, 2013]

§ 2700.10 Motions.

(a) An application for an order shall be by motion which, unless made dur-

ing a hearing or a conference, shall be made in writing and shall set forth the relief or order sought.

(b) Written motions shall be set forth in a document separate from other pleadings.

(c) Prior to filing any motion other than a dispositive motion, the moving party shall confer or make reasonable efforts to confer with the other parties and shall state in the motion if any other party opposes or does not oppose the motion.

(d) A statement in opposition to a written motion may be filed by any party within 8 days after service upon the party. Unless otherwise ordered, oral argument on motions will not be heard. Where circumstances warrant, a motion may be ruled upon prior to the expiration of the time for response; a party adversely affected by the ruling may seek reconsideration.

[58 FR 12164, Mar. 3, 1993, as amended at 64 FR 48713, Sept. 8, 1999; 71 FR 44207, Aug. 4, 2006]

§ 2700.11 Withdrawal of pleading.

A party may withdraw a pleading at any stage of a proceeding with the approval of the Judge or the Commission.

§ 2700.12 Consolidation of proceedings.

The Commission and its Judges may at any time, upon their own motion or a party's motion, order the consolidation of proceedings that involve similar issues.

Subpart B—Contests of Citations and Orders

§ 2700.20 Notice of contest of a citation or order issued under section 104 of the Act.

(a) *Who may contest.* (1) An operator may contest:

(i) A citation or an order issued under section 104 of the Act, 30 U.S.C. 814;

(ii) A modification of a citation or an order issued under section 104 of the Act; and

(iii) The reasonableness of the length of time fixed for abatement in a citation or modification thereof issued under section 104 of the Act.

(2) A miner or representative of miners may contest: